

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA
and the States of CALIFORNIA,
CONNECTICUT, FLORIDA,
ILLINOIS, MASSACHUSETTS,
MICHIGAN, NEW YORK, OHIO,
RHODE ISLAND, and TEXAS, and
the Government of PUERTO RICO,
ex rel. MSP WB, LLC, and *ex. rel.*
MICHAEL ANGELO,

Plaintiffs-Relators,

v.

STATE FARM MUT. AUTO. INS.
CO., *et al.*

Defendants.

Case No.: 2:19-cv-12165-LJM-APP

Hon. Laurie J. Michelson

Mag. Judge Anthony P. Patti

**DEFENDANTS' MOTION REQUESTING JUDICIAL NOTICE
IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS**

Defendants respectfully move this Court, in connection with their concurrently filed Motion to Dismiss, to take judicial notice of Exhibits 1–47, true and correct copies of which are attached hereto, pursuant to Federal Rule of Evidence 201. Exhibits 1–46 are news articles, complaints and documents filed in other courts, and information contained in the public record maintained by the Delaware Department of State on its website regarding the formation of Relator MSP WB, LLC. Exhibit 47 is a list of prior lawsuits initiated by Relator MSP WB, LLC's affiliates, and judicial notice of such lawsuits is requested.

Pursuant to Local Rule 7.1(a)(1), Relators' consent to the relief requested was sought on December 13, 2021 and was not given, necessitating presentation of this motion.

[Defendants' signature blocks located at end of memorandum of law]

**DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION
REQUESTING JUDICIAL NOTICE IN SUPPORT OF MOTION TO
DISMISS THE AMENDED COMPLAINT**

STATEMENT OF ISSUE PRESENTED

Should the Court take judicial notice of Exhibits 1–46 and the litigations listed in Exhibit 47 in connection with Defendants' Motion to Dismiss the Amended Complaint?

Answer: Yes.

CONTROLLING OR MOST APPROPRIATE AUTHORITY

1. Fed. R. Evid. 201
2. *Armengau v. Cline*, 7 F. App'x 336 (6th Cir. 2001)
3. *U.S. ex rel. Harper v. Muskingum Watershed Conservancy Dist.*, 2015 WL 7575937 (N.D. Ohio 2015)
4. *U.S. ex rel. Dingle v. BioPort Corp.*, 270 F. Supp. 2d 968 (W.D. Mich. 2003)
5. *U.S. ex rel. Osheroff v. Humana, Inc.*, 776 F.3d 805 (11th Cir. 2015)
6. *U.S. ex rel. Fry v. Health All. of Greater Cincinnati*, 2009 WL 1324164 (S.D. Ohio 2009)
7. *Gomba Music, Inc. v. Avant*, 62 F. Supp. 3d 632, 636 (E.D. Mich. 2014)
8. *Cunningham v. Rapid Response Monitoring Servs.*, 251 F. Supp. 3d 1187 (M.D. Tenn. 2017)
9. *Bridgeport Music, Inc. v. Smith*, 714 F.3d 932 (6th Cir. 2013)
10. *U.S. v. Ferguson*, 681 F.3d 826 (6th Cir. 2012)

ARGUMENT

This Court should grant Defendants’ motion to take judicial notice of Exhibits 1–46 and the lawsuits listed in Exhibit 47. The Court may take judicial notice of facts “not subject to reasonable dispute” in that they are either (1) “generally known within the territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). A court must take judicial notice “if requested by a party and supplied with the necessary information.” Fed. R. Evid. 201(c)(2). A court ruling on a Rule 12(b)(6) motion may consider public records and matters of which the court may take judicial notice. *Armengau v. Cline*, 7 F. App’x 336, 344 (6th Cir. 2001); *see also New England Health Care Emps. Pension Fund v. Ernst & Young, LLP*, 336 F.3d 495, 501 (6th Cir. 2003).

I. News Articles (Exhibits 1 – 34)

Defendants request that the Court take judicial notice of the existence of the news articles attached as Exhibits 1 through 34. This Court may properly take judicial notice of the existence of news articles available on the Internet in the context of the False Claims Act’s (“FCA”) public disclosure bar. *U.S. ex rel. Harper v. Muskingum Watershed Conservancy Dist.*, 2015 WL 7575937, at *7 (N.D. Ohio 2015) (taking judicial notice of online public postings and news stories in FCA case for purposes of public disclosure bar); *U.S. ex rel. Dingle v. BioPort Corp.*, 270 F.

Supp. 2d 968, 975 (W.D. Mich. 2003) (concluding in FCA context that it is appropriate to take judicial notice, under Fed. R. Evid. 201, of public documents from reliable sources on the Internet).

Exhibit No.	
1	Celeste Bott, <i>7th Circ. Won't Pull Criticism From State Farm Suit Ruling</i> , LAW 360 (May 25, 2021), https://www.law360.com/articles/1387884 .
2	Celeste Bott, <i>Debt Cos. Say 7th Circ.'s State Farm Suit Ruling Is 'Unfair'</i> , LAW 360 (May 5, 2021), https://www.law360.com/articles/1381858 .
3	Celeste Bott, <i>7th Circ. Dings 'Sue First' Tactic Of State Farm Medicare Suit</i> , LAW 360 (April 20, 2021), https://www.law360.com/articles/1377067 .
4	Carolina Bolado, <i>USAA Slams Akerman DQ Bid In Medicare Repayment Row</i> , LAW 360 (March 3, 2021), https://www.law360.com/articles/1360785 .
5	<i>Physicians and Other Providers Can Now Sue Insurers for Double Damages Under the Medicare Secondary Payer Law</i> , NATIONAL LAW REVIEW (Feb. 25, 2021), https://www.natlawreview.com/article/physicians-and-other-providers-can-nuow-sue-insurers-double-damages-under-medicare .
6	Celeste Bott, <i>7th Circ. Urged To Revive State Farm Medicare Suit</i> , LAW360 (Nov. 5, 2020), https://www.law360.com/articles/1326247 .
7	Kevin Stawicki, <i>11th Circ. Urged To Undo Medicare Secondary Payer Ruling</i> , LAW 360 (Oct. 28, 2020), https://www.law360.com/articles/1323438 .
8	Kathryn Tucker, <i>Medical Providers Score Billion-Dollar Win in Insurance Recovery Claims Case</i> , BENEFITS PRO (Sept. 17, 2020), https://www.benefitspro.com/2020/09/17/lawyers-says-11th-circuit-ruling-will-allow-billions-of-dollars-in-insurance-recovery-claims-412-103994/?slreturn=20211017163021 .
9	Jim Sams, <i>Appellate Court Revives Medicare Secondary Payer Act Suits by Collection Agents</i> , CLAIMS JOURNAL (Sept. 9, 2020), https://www.claimsjournal.com/news/national/2020/09/09/299226.htm .

Exhibit No.	
10	Carolina Bolado, <i>11th Circ. OKs Medicare Providers' Suits Against Insurers</i> , LAW360 (Sept. 4, 2020), https://www.law360.com/articles/1307545 .
11	Angela Childers, <i>Insurers could face stiff Medicare secondary payer penalties</i> , BUSINESS INSURANCE (Feb. 26, 2020), https://www.businessinsurance.com/article/20200226/NEWS08/912333248/Insurers-could-face-stiff-Medicare-secondary-payer-penalties .
12	Carolina Bolado, <i>Medicare Plans Try To Revive Suits Against Primary Insurers</i> , LAW 360 (Dec. 13, 2019), https://www.law360.com/articles/1228070 .
13	<i>Recent Settlements Warn Of Consequences For Failure To Reimburse Medicare</i> , JD SUPRA (Nov. 27, 2019), https://www.jdsupra.com/legalnews/recent-settlements-warn-of-consequences-14614/ .
14	Lauraann Wood, <i>'Enough Is Enough' In State Farm Medicare Suit, Judge Says</i> , LAW 360 (Nov. 26, 2019), https://www.law360.com/articles/1223437 .
15	Celeste Bott, <i>7th Circ. Nixes Sanctions In Medicare Reimbursement Suit</i> , LAW 360 (Aug. 16, 2019), https://www.law360.com/articles/1189301 .
16	Celeste Bott, <i>State Farm Slams Cert. Bid In Medicare Reimbursement Suit</i> , LAW 360 (Jul. 25, 2019), https://www.law360.com/articles/1181924 .
17	Carolina Bolado, <i>Hanover Unit Can't Dodge Medicare Reimbursement Suit</i> , LAW 360 (May 23, 2019), https://www.law360.com/articles/1162450 .
18	<i>MSP Recovery Gets Caught in the Tangled Web of the Medicare Secondary Payer Act</i> , GR MEDICARE (Mar. 21, 2019), https://www.grmedicare.com/2019/03/21/msp-recovery-gets-caught-in-the-tangled-web-of-the-medicare-secondary-payer-act/#page=1 .
19	<i>Ocean Harbor: Fla. App. Flips Class Certification in MSPA Suit</i> , 2018 WLNR 34083572, CLASS ACTION PROSPECTOR (Nov. 2, 2018), https://1.next.westlaw.com/Document/I6ebc0670df3f11e88afe9a173e6690a2/View/FullText.html?transitionType=UniqueDocItem&contextData=(sc.Default)&userEnteredCitation=2018+WLNR+34083572 .
20	Laura Besvinick & Julie Nevins, <i>The State Of Medicare Secondary Payer Act Litigation</i> , LAW 360 (July 27, 2018),

Exhibit No.	
	https://www.law360.com/articles/1067520/the-state-of-medicare-secondary-payer-act-litigation .
21	Lawrence Hamilton II & Michael Gropper, <i>Ruling: Medical Providers Not Subject to Double Damages Under Medicare Secondary Payer Act</i> , HOLLAND & KNIGHT (Mar. 8, 2018), https://www.hklaw.com/en/insights/publications/2018/03/ruling-medical-providers-not-subject-to-double-dam .
22	Gary Herschman et al., <i>Medicare Secondary Payer Compliance: Payer FCA Litigation (Part VII)</i> , HEALTH LAW ADVISOR (Mar. 8, 2018), https://www.healthlawadvisor.com/2018/03/08/medicare-secondary-payer-compliance-payer-fca-litigation-part-vii/ .
23	Andrew Kuder, <i>Medicare Secondary Payer Compliance: Non-Group Health Plans (NGHPs) (Part IV)</i> , NATIONAL LAW REVIEW (Feb. 27, 2018), https://www.natlawreview.com/article/medicare-secondary-payer-compliance-non-group-health-plans-nghps-part-iv .
24	John Kennedy, <i>Medicare Advantage Groups Push To Keep State Farm Suit</i> , LAW360 (Aug. 4, 2017), https://www.law360.com/articles/951494 .
25	<i>MSP Recovery Wins First-Ever Certifications for Class-Action Lawsuits</i> , BUSINESS WIRE (May 9, 2017), https://www.businesswire.com/news/home/20170509005925/en/MSP-Recovery-Wins-First-Ever-Certifications-for-Class-Action-Lawsuits .
26	<i>Second Circuit Affirms Dismissal of FCA Cases</i> , JD SUPRA (Apr. 11, 2017), https://www.jdsupra.com/legalnews/second-circuit-affirms-dismissal-of-fca-40462/ .
27	<i>Second Circuit Affirms Dismissal of False Claims Act Medicare Secondary Payer Cases</i> , JONES DAY (Apr. 2017), https://www.jonesday.com/en/insights/2017/04/second-circuit-affirms-dismissal-of-false-claims-act-medicare-secondary-payer-cases#:~:text=The%20Second%20Circuit%20affirmed%20the,%22MSP%22)%20provision%20of%20the .
28	Celia Ampel, <i>How a Miami Law Firm Plans to Recover Billions for Medicare</i> , LAW.COM (Apr. 7, 2017), https://www.law.com/sites/almstaff/2017/04/07/how-a-miami-law-firm-plans-to-recover-billions-for-medicare/ .
29	Dani Kass, <i>2nd Circuit Upholds Sanctions Against NY Atty In FCA Suit</i> , LAW 360 (Apr. 4, 2017), https://www.law360.com/articles/909643/2nd-circ-upholds-sanctions-against-ny-atty-in-fca-suit .

Exhibit No.	
30	Emma Cueto, <i>Auto Insurer Owes for Medicare Patient Injuries, Suit Says</i> , LAW 360 (Mar. 30, 2017), https://www.law360.com/articles/908088/auto-insurer-owes-for-medicare-patient-injuries-suit-says .
31	<i>Medicare Secondary Payer – A Lot Less Boring Now</i> , DRUG AND DEVICE LAW BLOG (Jan. 16, 2017), https://www.druganddevicelawblog.com/2017/01/medicare-secondary-payer-a-lot-less-boring-now.html .
32	Vera Gruessner, <i>How the SMART Act Resolved Medicare Secondary Payer Issues</i> , HEALTH PAYER INTELLIGENCE (May 18, 2016), https://healthpayerintelligence.com/news/how-the-smart-act-resolved-medicare-secondary-payer-issues .
33	Michelle Andrews, <i>Payment Can Be Elusive For Medicare Beneficiaries In Personal Injury Cases</i> , NPR (Jan. 29, 2013), https://www.npr.org/sections/health-shots/2013/01/29/170545833/payment-can-be-elusive-for-medicare-beneficiaries-in-personal-injury-cases .
34	<i>New Medicare Reporting Rules Loom Over Defendants, Insurers</i> 32 No. 25 WESTLAW JOURNAL ASBESTOS 4 (Oct. 1, 2010), https://1.next.westlaw.com/Document/If891f557ee1611df9b8c850332338889/View/FullText.html?originationContext=typeAhead&transitionType=Default&contextData=(sc.Default) .

II. Publicly-Filed Court Documents and Delaware Department of State Public Information (Exhibits 35 – 46)

Defendants seek judicial notice of complaints and other documents filed in various courts, as well as information contained on the Delaware Department of State’s website. In FCA cases, “[c]ourts may take judicial notice of publicly filed documents . . . at the Rule 12(b)(6) stage.” *U.S. ex rel. Osheroff v. Humana, Inc.*, 776 F.3d 805, 811 (11th Cir. 2015) (taking judicial notice of transcript of public hearing and Special Master’s report in a different case). This includes publicly-filed

discovery documents. *United States ex rel. Fry v. Health All. of Greater Cincinnati*, 2009 WL 1324164, at *11 (S.D. Ohio 2009) (explaining that the court can take judicial notice of discovery documents filed on public docket). Similarly, information contained in public records, such as information filed with and maintained by the Delaware Secretary of State on its website, are the proper subject of judicial notice. *See Gomba Music, Inc. v. Avant*, 62 F. Supp. 3d 632, 636 (E.D. Mich. 2014) (taking judicial notice of state of Michigan's records regarding the incorporation of company).

Exhibit No.	
35	Amended Complaint, <i>U.S. v. Stricker</i> , ECF No. 1 (N.D. Ala. Dec. 2, 2009) (No. CV-09-PT-2423-E).
36	Amended Complaint, <i>U.S. ex rel. Takemoto v. The Hartford Fin. Servs. Grp.</i> , ECF No. 170 (W.D.N.Y. Oct. 31, 2014) (No. 1:11-cv-00613-WMS-JJM).
37	Amended Complaint, <i>U.S. ex rel. Hayes v. Allstate Ins. Co.</i> , ECF No. 21 (W.D.N.Y. Apr. 22, 2014) (No. 1:12-cv-01015-WMS-JJM).
38	Docket, <i>J.B. v. King Jamaican & Am. Restaurant</i> (Sup. Ct. Bronx Cnty. 2017) (No. 20278/17E).
39	Complaint, Dkt., <i>J.B. v. King Jamaican & Am. Restaurant LLC</i> , Dkt. No. 1 (Sup. Ct. Bronx Cnty. Apr. 30, 2018) (No. 20278/17E).
40	Settlement Agreement, <i>State Farm Mut. Auto. Ins. Co. v. Angelo</i> , ECF No. 118-2 (E.D. Mich. Apr. 4, 2021) (No. 3:19-cv-10669).
41	First Amended Complaint, <i>MSP Recovery Claims, Series LLC v. The Travelers Indem. Co.</i> , ECF No. 32 (S.D. Fla. Feb. 9, 2021) (No. 1:20-cv-24176).
42	Deposition of Jorge Lopez, <i>MSP Recovery Claims, Series LLC v. United Auto. Ins. Co.</i> , ECF No. 145-2 (S.D. Fla. April 14, 2021) (No. 1:20-cv-20887-CMA).

Exhibit No.	
43	Deposition of Christopher Miranda, <i>MSP Recovery Claims, Series LLC v. United Auto. Ins. Co.</i> , ECF No. 145-4 (S.D. Fla. April 14, 2021) (No. 1:20-20887-CMA).
44	Second Amended Complaint, <i>MSP Recovery Claims, Series LLC v. The Travelers Indemnity Co., et al.</i> , ECF No. 95 (S.D. Fla. Aug. 11, 2021) (No. 1:20-cv-24176).
45	First Amended Complaint, <i>MSP Recovery Claims, Series LLC v. AIG Prop. Cas. Co.</i> , ECF No. 55 (S.D.N.Y. Oct. 13, 2020) (No. 1:20-cv-2102).
46	Del. Dep't of State: Division of Corporations, MSP WB, LLC, https://icis.corp.delaware.gov/eCorp/EntitySearch/NameSearch.aspx (by searching "MSP WB, LLC" in "Entity Name").

III. Prior Lawsuits Initiated By Relator MSP WB LLC and Affiliates (Exhibit 47)

Defendants request that the Court take judicial notice of the existence of the lawsuits and complaints listed in Exhibit 47, which is a chart created by Defendants listing the case name, court and docket number, date the complaints were filed, and status of 144 lawsuits initiated by Relator MSP WB, LLC's affiliated entities that assert claims related to the Medicare Secondary Payer Act.¹ Courts "may take judicial notice of entries from its docket or another court's, although it may not credit disputable facts therein as evidence." *Cunningham v. Rapid Response Monitoring Servs.*, 251 F. Supp. 3d 1187, 1191 n.1 (M.D. Tenn. 2017) (taking judicial notice of

¹ Defendants created the chart to avoid burdening the Court with the actual complaints and dockets from the courts, which are voluminous. However, both are available in the public record.

plaintiff's commencement of other lawsuits and citing *In re Omnicare, Inc. Sec. Litig.*, 769 F.3d 455, 468 (6th Cir. 2014)). Courts may also take judicial notice of the fact of prior litigations, which are facts “not subject to reasonable dispute because [they] . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” *Bridgeport Music, Inc. v. Smith*, 714 F.3d 932, 936 n.4 (6th Cir. 2013) (citing Fed. R. Ev. 201(b)); *see also U.S. v. Ferguson*, 681 F.3d 826, 834 (6th Cir. 2012) (“Judicial records are a source of ‘reasonably indisputable accuracy’ . . .”).

* * *

WHEREFORE, Defendants request that the Court take judicial notice of Exhibits 1 – 46, true and correct copies of which are attached hereto, and the complaints listed in Exhibit 47.

Dated: December 15, 2021

Respectfully submitted,

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Company, Harleysville Insurance
Company of New Jersey, Harleysville
Insurance Company of New York,
Harleysville Lake States Insurance
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Insurance Company, Harleysville
Worcester Insurance Company,
Nationwide Agribusiness Insurance
Company, Nationwide Assurance
Company, Nationwide General Insurance
Company, Nationwide Insurance
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Insurance Company of Florida,***

*Company of America, Scottsdale
Indemnity Company, Scottsdale
Insurance Company, and Scottsdale
Surplus Lines Insurance Company*

*Nationwide Lloyds, Nationwide Mutual
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Property and Casualty Insurance
Company, Titan Insurance Company,
Victoria Fire & Casualty Company, and
Victoria Select Insurance Company*

CERTIFICATE OF SERVICE

I do hereby certify that on the 15th day of December 2021, I filed the foregoing document with the Clerk of the Court using the electronic court filing system, which will send notification of such filing to all Counsel of Record.

s/ Charles W. Browning
Charles W. Browning (P32978)

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